

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

UNITED STATES OF AMERICA)

v.)

KAYLA LUNA)

**No. 1:14-00005
JUDGE TRAUGER**

MOTION TO SET MONTHLY RESTITUTION PAYMENT OF \$25

Through counsel and after consultation with Ms. Luna's supervising probation officer, defendant Kayla Luna moves the Court to amend the conditions of supervised release to specify that Ms. Luna pay \$25 monthly toward restitution. In support of this motion, Ms. Luna would show the following:

1. On January 21, 2015, the Court placed Ms. Luna on probation for a three year term in connection with Ms. Luna's federal theft conviction. (D. 26, Judgment.)
2. The judgment provides in Probation Special Condition No. 1 that Ms. Luna pay restitution of \$135,660.33 to Tennessee Risk Management Trust insurance company, and that she pay restitution at a minimum monthly rate of ten percent of her gross monthly income. *Id.* at 3.
3. As reflected in the presentence report (PSR) and confirmed with U.S. Probation Officer Wendy Darden, Ms. Luna currently receives approximately \$2400 per month (\$1348 Social Security Disability and \$1090 retirement), which

would result in a minimum monthly restitution payment of \$240 per month under the present special condition of probation.

4. As reflected in the PSR, Ms. Luna was diagnosed in April 2012 with multiple myeloma, bone marrow cancer. PSR at 11. In connection with this, she is engaged in ongoing treatment including chemotherapy and bone marrow treatments every three weeks. She is experiencing ongoing issues with her right hip, right leg, and throat.

5. As reflected in the PSR, Ms. Luna's expenses continue to exceed her monthly income of \$2400.¹ Among her current monthly expenses are:

Rent	980
Vehicle payments	640
Insurance payments (Car, life, renters)	364
Groceries	400
Bank Note (property Columbia)	125
Bone treatments	314
Medicine	138
Utilities	630
Transportation	300
Son's rent at college	350
Coventry Credit	82
	<hr/>
	\$4,323.00

6. Additionally, Ms. Luna has at least \$30,328 in outstanding bills owed creditors, primarily arising from unpaid medical bills:

¹ Ms. Luna's husband recently started working at Nissan and has a net monthly income of approximately \$2160 which also contributes to the payment of their bills.

Credit Card	1123.15
Medicredit, Inc.	1826.80
Nashville Adj. Bureau	715.54
Credit Collection Services	623.01
Affiliated Creditors	252.64
Healthcare Rec.	187.41
Rushmore, Inc.	610.50
Global Management	1501.80
Cancer Treatment Center of America	7,412.07
Vanderbilt University Medical Center	16,000.00 (est.)
Rapid Recovery	75.15
Ms. Luna's Student Loans	(unknown)
	<hr/>
	\$30,328.07

7. United States Probation Officer Wendi Darden has advised counsel that Ms. Luna has complied with the conditions of her probation fully, with the exception of not being able to pay the restitution at the ten percent rate required by Special Condition No. 1. Ms. Darden further advised that Ms. Luna has been paying \$25 per month, although she noted that with Ms. Luna's financial situation, it appears that even a \$25 payment poses some burden for Ms. Luna to pay.

After discussion with Ms. Darden and Ms. Luna, and because Ms. Luna cannot afford to pay more than \$25 per month, counsel moves the Court to amend Special Condition No. 1. Specifically, counsel moves the Court to remove the requirement that Ms. Luna pay ten percent of her gross monthly income, and to instead require that Ms. Luna pay \$25 per month toward restitution. All other conditions of probation would remain the same.

Respectfully submitted,

/s/ Caryll S. Alpert
CARYLL S. ALPERT (BPR#017021)
Assistant Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203
615-736-5047
E-mail: Caryll_Alpert@fd.org

Attorney for Kayla Luna

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2017, I electronically filed the Motion To Set Restitution Payment with the clerk of the court by using the CM/ECF system, which will send a Notice of Electronic Filing to the following: Stephanie N. Toussaint, Assistant United States Attorney, 110 Ninth Avenue South, Suite A961, Nashville, TN 37203.

/s/ Caryll S. Alpert
CARYLL S. ALPERT